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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CORONAVIRUS REPORTER,
CALID INC,
PRIMARY PRODUCTIONS LLC,
DR. JEFFREY D. ISAACS,
on behalf of themselves and all others similarly
situated

Plaintiffs,

vs.

APPLE INC.,
FEDERAL TRADE COMMISSION

Defendants.

Case No. 3:21-cv-05567-EMC

**NOTICE TO APPEAR IN LIEU OF
SUBPOENA [CCP § 1987(b),(c)]**

Hearing

Date: November 4, 2021
Time: 1:30PM
Place: Courtroom 5, 17th Floor
(videoconference)

The Honorable Edward M. Chen

1 **TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2
3 NOTICE IS HEREBY GIVEN that, pursuant to *Code of Civil Procedure* § 1987, Plaintiff
4 Coronavirus Reporter (“Plaintiff”) hereby demands that **Chair Lina Khan**, of Defendant
5 (“Defendant”) FTC, or her appointee/delegate, appear at the scheduled preliminary injunction
6 hearing in the above-referenced matter, which is presently scheduled to commence on at
7 1:30PM on November 4, via a videoconference link to Courtroom 5.

8 This request is made pursuant to *Code of Civil Procedure* § 1987(b), which provides that
9 “[t]he giving of the notice shall have the same effect as service of a subpoena on the witness,
10 and the parties shall have those rights and the court may make those orders, including the
11 imposition of sanctions, as in the case of a subpoena for attendance before the court.”

12 Under § 1987 Subsection C, no accompanying evidence production is sought along with this
13 notice. However, the Chairperson is respectfully requested to have familiarity with the
14 following subjects, to the extent reasonably possible:

15 Knowledge of Plaintiff’s submission of a complaint to antitrust@ftc.gov

16 Knowledge of any investigation of the aforementioned complaint.

17 Knowledge of the nature and number of similar complaints to FTC involving App
18 Store censorship of free apps by Defendant Apple.

19 Knowledge of any pending investigation of any “free app censorship.”

20 Knowledge of applicable marketplace definitions, under Sherman Act, to free app
21 censorship.

22 Knowledge of any complaints or investigation concerning Apple’s *quid pro quo*
23 lobbying efforts with a Georgia HBCU or other state entities.

24 FTC’s position on *Noerr-Pennington* immunity, or lack thereof, regarding Apple’s
25 lobbying against competitors (e.g. Plaintiff), as pursuant to FTC publication

26 [https://www.ftc.gov/sites/default/files/documents/reports/ftc-staff-report-concerning-
27 enforcement-perspectives-noerr-pennington-doctrine/p013518enfperspectnoerr-
28 penningtondoctrine.pdf](https://www.ftc.gov/sites/default/files/documents/reports/ftc-staff-report-concerning-enforcement-perspectives-noerr-pennington-doctrine/p013518enfperspectnoerr-penningtondoctrine.pdf)

1 There is a “time honored principle that under our system of justice every litigant is entitled to
2 another person's relevant and non privileged testimony in a judicial proceeding.” *Owens v.*
3 *QVC*, 221 F.R.D. 430, 432 (E.D. Pa. 2004). Plaintiff’s Notice of Motion filed August 8, 2021
4 notified all parties that “evidentiary materials to be presented at the hearing” would form a
5 basis of the motion. Plaintiffs have been working diligently with opposing counsel to depose
6 witnesses in lieu of this notice, to no avail. **Plaintiffs intend to call a total of four witnesses**
7 **and approximate the hearing will have a four hour duration which the Court is**
8 **respectfully requested to allocate.** Plaintiff shall reimburse all reasonable expenses incurred
9 by Chairperson Khan, or her delegate/appointee, in complying with this notice.

10 Dated: October 24, 2021

11 /s/ Keith Mathews

12 Keith Mathews

13 NH Bar No. 20997

14 Associated Attorneys of New England

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24 **CERTIFICATE OF SERVICE**

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26 I, Keith Mathews, do declare as follows:
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28

1 I certify that a copy of the foregoing was delivered electronically to counsel for the
2 Defendants with counsel, and emailed to those without known counsel.

3 Executed on this 24th day of October 2021.
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7 /s/ Keith Mathews
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9 Keith Mathews

10 Attorney for Plaintiff Coronavirus Reporter
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